IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE 1981, as amended

AND

IN THE MATTER OF THE COMPLAINT BY MR. PAUL BLANCHETTE ALLEGING DISCRIMINATION ON THE BASIS OF SEX BY MANINOS INVESTMENTS (SAULT) LTD., CARRYING ON BUSINESS AS SUPER SUBMARINE AND DONUTS

WILLIAM F. PENTNEY
BOARD OF INQUIRY

APPEARANCES:

Ms. A. Lyons:	Counsel for Ontario Human Rights Commission
Mr. F. Provenzano:	Counsel for Respondent
Mr. P. Blanchette:	Complainant
Hearing Dates:	July 2, August, 18, 19, 1987

The complaint in this case alleges that the respondent refused to hire the complainant for a position which it advertised to be available, because of his sex, contrary to s. 4(1) of the Ontario Human Rights Code. I was appointed by the Minister of Labour to inquire into this complaint on June 17, 1987, and the hearing into this matter commenced by conference call on July 2, 1987, at which time the dates for the hearing of evidence were established. The hearing convened in Sault Ste. Marie on August 18 and 19, 1987.

The original complaint was against Super Submarine and Ice Cream Maninos Investments (Sault) Inc., but at the outset of the hearing the complaint was amended, on consent, to reflect the actual corporate registration, to Maninos Investments (Sault) Ltd., carrying on business as Super Submarine and Donuts (see exhibits 1 and 2).

Many of the facts that are relevant to this complaint are not disputed, but on several key matters there is contradictory evidence, and in order to resolve these contradictions it will be necessary to deal with the testimony in some detail.

The broad outline of the events which gave rise to this complaint is easily summarized. Mr. Maninos, the president and sole shareholder of the respondent, has operated two outlets of this business for several years; one outlet has been open since 1980, and the other since 1984. In the course of this business he has required new employees from time to time, and he has often placed advertisements in the local newspaper, the Sault Star, as one means of identifying potential employees. On October 8, 9 and 10, 1985 Mr. Maninos placed an advertisement in that newspaper in the usual form. The advertisement

(exhibit 4) stated: "WAITRESS or waiter needed, apply Super Submarine and Donuts, 342 Queen Street East."

The complainant, Mr. Blanchette, was a student enrolled in a computer programming course at the Sault College of Applied Arts and Technology in 1985. In October he was residing with his cousin and her two children, and he wanted to find a part-time job. He saw the respondent's advertisement in the Sault Star, and on October 10 he delivered his resume to the Queen Street location of the business. Mr. Blanchette testified that he left the resume (exhibit 6) with an employee of the respondent. He asked to speak to the manager, but the employee behind the counter told him that the manager was not available.

Mr. Blanchette, and his cousin Grace Miskimins, both testified that she also submitted a resume in response to this ad. There is some dispute in the evidence about the subsequent events in relation to Ms. Miskimins' application, but at this stage it is merely necessary to state that both the complainant and Ms. Miskimins testified that shortly after submitting her resume she was contacted by the respondent and asked to come for an interview. Mr. Blanchette testified that when he learned of this he immediately telephoned the respondent to inquire about the status of his application. He testified that during this phone conversation with an unidentified female whom he presumed to be an employee, he was told that all of the interviews had been arranged. He further testified that in response to his query as to why he had not been granted an interview this

person stated "Well that's because we only hire [females] here." (Transcript, pp. 13, as corrected at p. 17).

The evidence indicates that the respondent employed two male workers in June 1980, but by August 1980 the employment of both had terminated. No other male employees were subsequently hired.

Counsel for the Commission argues that Mr. Blanchette was denied an opportunity to compete for this position, and consequently was not hired for it, because of the respondent's policy of not hiring men. Respondent's counsel denies this policy, and submits that the evidence indicates that Mr. Maninos, the only person with authority to make hiring decisions, in fact did not ever see Mr. Blanchette's resume at the relevant time. Therefore, counsel for respondent argues, there can have been no discrimination here. In response, counsel for the Commission asks me to infer that the resume was either not delivered to Mr. Maninos, or considered but rejected, because of the policy of hiring only women.

There are several difficult issues presented by the evidence in this case. In many cases of discrimination there will be a clear act of denial of employment or access to a service, and the dispute will centre on the motive for, or effect of, this action. In this case there is no direct evidence that the complainant's resume was considered and rejected by the respondent. Indeed, the uncontradicted testimony of the respondent is that he had not seen the complainant's resume before, and that he did not review all of the applications submitted in response to the advertisement in October 1985. Counsel for the respondent argued strenuously at several points during the hearing that the absence of such direct evidence was fatal to the Commission's case. Indeed,

before the completion of the Commission's evidence, counsel for the respondent submitted that the matter should be discontinued. I ruled that the motion for a "non-suit" was premature (Transcript, p. 38), and the matter was not pursued later in the hearing.

Is the absence of direct evidence that Mr. Maninos considered and rejected the complainant's resume fatal to the Commission's case? Although such direct evidence of a refusal would undoubtedly be helpful on this point, it is my view that its absence is not necessarily fatal. In many other cases Boards of Inquiry have relied on inferences drawn from circumstantial evidence in finding discrimination (for a discussion of these cases see W.S. Tarnopolsky and W.F. Pentney, Discrimination and the Law, Toronto: R. De Boo Publishers, 1985, ch. 14; B. Vitzkelety, Proving Discrimination in Canada, Toronto: Carswell, 1987, pp. 140-42). The inference of an act of discrimination must be distinguished from the inference of discriminatory animus or intention, which is the more usual inference to be drawn in these cases. In the latter situation the circumstantial evidence supports the conclusion that the impugned conduct was motivated by a discriminatory attitude toward the complainant, based on one of the prohibited grounds.

In this case, however, I am asked to find that the respondent had adopted a policy of not hiring men, and to infer that pursuant to that policy Mr. Blanchette's resume was either destroyed, or considered and rejected. Such an inference obviously extends beyond the usual one described previously. In my view, it is possible to draw such an inference in an appropriate case. In order to determine whether this is such a case it is necessary to assess the evidence on

the two issues outlined earlier; namely: (i) did the respondent pursue a policy of not hiring men?; (ii) if so, can it be inferred from the evidence that the complainant was not hired because of that policy?

(i) Hiring Policy

Mr. Maninos stated in testimony that he had employed only two male employees since opening the respondent business, (Transcript, p. 122), but he also stated that he received very few applications for employment from men. Counsel for the respondent submitted that this could be explained by the nature of the business, i.e. that most men would not be interested in employment as a counter person in a fast food outlet. I am far from satisfied that this is a satisfactory explanation for this situation, but I do accept the submission that the small number of male employees, and the equally small percentage of male applicants, in and of themselves, do not establish a policy of discrimination by the respondent.

Several witnesses testified that Mr. Maninos made disparaging comments about his two former male employees, and one witness testified that he also stated that because of his negative experience with these employees he would not hire men. The Human Rights Officer who was responsible for the investigation of this complaint testified that when she first telephoned the respondent in connection with this matter Mr. Maninos told her "I'll hire who I want. You get out of my case. I prefer women. Maybe men can do the job. The last ones I had in 80-81 were a pain in the ass." (Transcript, p. 69). She also

testified that earlier during the same telephone call she spoke with the respondent's Assistant Manager, Ms. Mooney, who told her "they only hire girls."

At this point I should mention that this testimony was given after the witness had consulted her notes of these conversations in order to refresh her memory. Counsel for the respondent sought to impeach the credibility of this witness by pointing to several problems with these notes. From the witness' answers during cross-examination it is apparent that the notes are not a complete record of the conversations between herself and Ms. Mooney and Mr. Maninos; the notes do not record what she said to them, nor do they reveal all of the answers given during these conversations. The notes are written in the past tense, and an unexplained question mark in the witness' handwriting was placed next to the date on the form on which these notes were made (see exhibit 17). Counsel for the respondent urges me to draw the conclusion that these notes are not a trustworthy record of these conversations.

Although it would obviously be helpful if these notes contained a more complete record of these conversations, I am not satisfied that the problems outlined earlier render them untrustworthy. In all likelihood the investigator simply recorded the portions of these conservations which appeared to her to be salient at that time.

The testimony of the investigator was directly contradicted by that of Ms. Mooney and Mr. Maninos. Neither witness made notes of their conversation with Ms. Fratesi, but in the ordinary course of events that would not be unusual, since few people maintain notes of their everyday telephone conversations.

In my view the testimony of Ms. Fratesi is to be preferred on this point, especially when it is considered in connection with the testimony of Ms. Jolie, discussed below. Ms. Mooney's recollection of this telephone conversation was understandably vague, given the amount of time that had elapsed, and in my view the evidence of Ms. Fratesi on this point is more credible. Mr. Maninos also denied making certain the statements attributed to him by Ms. Fratesi, although he did admit that he said that his former male employees were "a pain in the ass," and that "maybe men can do the job." The latter statement indirectly supports the argument of the Commission that a discriminatory hiring policy existed. On balance, I am inclined to prefer the testimony of Ms. Fratesi over that of Mr. Maninos on this point.

Another witness, Ms. Jolie, testified that while she was employed by Mr. Maninos at Super Submarine and Donut in 1985 she heard him say "that he had problems with a man in the past and he wouldn't hire one ever again." (Transcript, p. 46). Her testimony on this conversation, and the time and circumstances in which it occurred, was quite detailed, and this was not undermined or called into question during cross-examination. Although Mr. Maninos contradicted Ms. Jolie on this point, I find her testimony about these events more credible.

Furthermore, this evidence is consistent with the testimony of the complainant about the response of the employee to his inquiry about the status of his application. The evidence indicates that the telephone in the Queen St. outlet was generally only available to employees, and I find that Mr. Blanchette correctly surmised that it was an employee of the respondent who told him "we

only hire females." It is not necessary to delve into the question of whether this employee was authorized to make such a pronouncement about corporate policy, in view of my finding that the respondent is liable on other grounds, which are explained later in these reasons.

On the basis of this evidence I find that Mr. Maninos had adopted a policy of not hiring men, after his negative experience with the first two male employees. Although the fact that he did not hire any male employees after 1980 does not of itself require the conclusion that he adopted a discriminatory policy, that fact, combined with the oral evidence supports this conclusion. I find that Mr. Maninos articulated and applied a policy of not employing men at his Super Submarine and Donut Shops.

It only remains to consider whether this policy was applied to bar Mr. Blanchette.

(ii) Application of the Policy

Several witnesses testified about the general process for distributing applications for employment. There was general agreement among witnesses that application forms were distributed to anyone who requested one, and that the completed application form, or resume (if a form was not completed) could be accepted by any employee. The Assistant Manager, Ms. Mooney, testified that the completed forms were placed on the desk of Mr. Maninos, and that he would review the forms in order to select applicants to be interviewed.

Mr. Blanchette testified that he dropped off his resume at the Queen Street location on October 10, 1985, and that the resume was accepted by the

employee behind the counter. He did not testify as to what that employee did with the resume upon receipt of it; in his original testimony and during cross-examination he indicated that he left immediately after handing over the resume.

Counsel for the Commission asks me to infer that the resume was either destroyed or considered but rejected, because of the respondent's policy of not hiring men. Such a conclusion would obviously support a finding of a contravention of s. 4(1) of the Ontario Human Rights Code. As stated earlier in these reasons, I am of the view that in appropriate circumstances it is possible to draw such an inference. For example, if a discriminatory policy was proven and a member of the disfavoured group was one of only a few applicants for a position, it would be reasonable to assume that the policy was one of the contributing causes of the failure to hire that person, and a prima facie violation of the Code would be established.

The evidence in this case, however, does not conform to this hypothetical example; here the uncontradicted evidence of the witnesses for the respondent is that many applications were received in response to the advertisement in October 1985. Ms. Mooney testified that "maybe 50, 70" applications were received in response to this ad (Transcript, p. 107), while Mr. Maninos testified that "between 60 to 100 applications [were received] every time we have an ad." (Transcript, p. 118). Furthermore, Mr. Maninos testified that he did not review all of the applications which he received. (Transcript, pp. 119-120). Mr. Maninos also testified that he had never seen Mr. Blanchette's resume prior to the hearing. (Transcript, p. 118). In view of the large number of resumes

received by Mr. Maninos in the course of this business, and the passage of time between October 1985 when these events occurred and the date of his testimony, it is difficult to believe that Mr. Maninos could be so definite on this point, but his evidence was neither contradicted nor undermined by counsel for the Commission and thus it must be given some weight.

The inherent improbability of this testimony may perhaps be countered, in some measure, if it is evaluated in the light of the testimony of Mr. Maninos and Ms. Mooney concerning the small number of applications received from males, i.e. it may be that Mr. Maninos would be more likely to remember whether he had ever before seen Mr. Blanchette's resume simply because he received so few applications from men. Ms. Mooney testified that in her experience the vast majority of applications are from females; she estimated that if 50 applications were received only one or two applications would be from males. (Transcript, p. 109). Mr. Maninos also testified that only one or two per cent of the applications he received were from males. (Transcript, p. 121). Despite this, it is difficult to believe that Mr. Maninos could be so definite that he never saw this resume prior to the hearing. In any event, the testimony of Ms. Mooney and Mr. Maninos that they had never seen Mr. Blanchette's resume prior to the hearing, though inherently improbable in my opinion, stands essentially unchallenged.

This evidence would not, in my opinion, support an inference that Mr. Maninos considered and rejected Mr. Blanchette's application. In order for me to draw such an inference on the basis of the circumstantial evidence I would have to be convinced that the inference of discrimination is more probable or reasonable than other possible inferences or hypotheses which could be drawn

from this evidence (see Vitzkelety, Proving Discrimination in Canada, supra, p. 142). I am of the view that the evidence I have summarized above is equally consistent with the conclusion that Mr. Blanchette's resume was simply "buried" in the pile of applications, and never considered by Mr. Maninos. This view of the facts was strongly urged upon me by counsel for the respondent.

The testimony of Mr. Maninos, however, undermines this alternative conclusion and leads me to the inference that Mr. Blanchette's resume was considered but rejected because of the discriminatory hiring policy. Mr. Maninos explained the procedure for considering applications received in response to a newspaper advertisement in the following way:

> Q. When you receive these applications, would you explain what your procedure is in dealing with the application?
>
> A. Usually I wait to see for the first maybe two days until the ad is you know finished. In other words, say if we start the ad today and we run it for three days, at the end of the three days then I have most of the applications in. In many cases a week later still applications come in, but I go ahead the first couple of days and I start calling them for interviews.
>
> ...
>
> Q. As a rule if you have a large number of applications or a number of applications, do you review every application before making appointments for interviews?
>
> A. The ones I have in front of me, yes, and I go through. But as I said before, there is more applications coming and you know I can wait a week later until all the applications are in. So I go ahead and I interview [sic] all the ones that I have and I try to pick the most satisfied to me. (Transcript, pp. 118-119).

Mr. Blanchette testified that he submitted his resume on October 10, the third day that the advertisement appeared in the Sault Star. There is no evidence to indicate that Mr. Maninos departed from the usual practice for dealing with applications that he outlined in his testimony, and thus it is reasonable to conclude that on October 10 Mr. Maninos would have reviewed all of the applications received to that point, and that in doing so he must have seen Mr. Blanchette's resume. Although Mr. Maninos testified that he did not recall having seen the complainant's resume before the hearing, as I indicated earlier this evidence is inherently improbable, and I do not think that I should place much weight on it.

One question which remains to be considered is when Mr. Maninos reviewed the applications on October 10. Mr. Blanchette dropped off his resume early in the afternoon, and it is possible that Mr. Maninos would have already reviewed the applications by that time. If that is what actually occurred then the inference of discrimination cannot be drawn, because then the situation is consistent with a non-discriminatory explanation, i.e. that the remaining applications were not considered because enough qualified applicants were identified in the first screening. There is no direct evidence about Mr. Maninos' actions during this period. We simply do not know when he undertook the initial screening of applicants.

Ordinarily one would not expect that a business such as the respondent's would conduct its hiring according to a meticulously documented process, and in view of the dimming of memory about such routine events which inevitably occurs with the passage of time, it is not surprising that a more definite

recollection is impossible. The evidence, however, leads me to conclude that in fact Mr. Maninos did not complete his review of the applications before Mr. Blanchette dropped off his resume.

Ms. Miskimins testified that she delivered her resume to the Queen Street location of the respondent on October 10, in the late afternoon. This was after Mr. Blanchette delivered his resume, and presumably, in accordance with the usual practice, these resumes would have been placed in the same pile. Ms. Miskimins testified that she was telephoned by an employee of the respondent to arrange for an interview. Although she was unsure of the exact date when this telephone call occurred, that matter does not need to be resolved because in respect of this issue it is the fact that the telephone call occured, rather than the precise date, which is significant. The fact that Ms. Miskimins was telephoned for an interview indicates that a screening of applications by Mr. Maninos was done after she submitted her application, and by this time Mr. Blanchette's resume had been submitted to the employee of the respondent.

Based on this evidence I am satisfied that Mr. Maninos did not review the applications before the late afternoon of October 10, and thus he must have seen Mr. Blanchette's resume at that time. In view of the somewhat vague criteria applied by Mr. Maninos in choosing among competing applicants (which will be discussed in more detail below), and the impossibility of comparing Mr. Blanchette's qualifications with those of the other applicants, it is impossible to conclude that the complainant would have been granted an interview but for the discriminatory hiring policy. There is simply no way to know whether, but for this policy, Mr. Blanchette would have been interviewed and ultimately hired.

Such a finding, though not necessary to establish contravention of s. 4(1) of the Code, is obviously relevant to the question of what remedy is appropriate.

As I mentioned earlier in these reasons, Mr. Maninos is the president and sole shareholder of the respondent business. He is the only person with authority to hire employees. There can be no question that the respondent is liable for his discriminatory conduct. This responsibility can be grounded on the organic theory of corporate responsibility explained in Oalarte v. Commodore Business Machines (1983), 4 C.H.R.R. D/1705, aff'd 14 D.L.R. (4th) 118 (Ont. Div. Ct.), or on the basis of vicarious liability pursuant to s. 44(1) of the Code.

I should emphasize in these reasons that the inference I have drawn from the evidence before me, in my view, is grounded in the respondent's testimony about his usual business practice. It is appropriate for a board of inquiry to draw such an inference, if it is supported by the evidence, because otherwise much discriminatory conduct could be hidden beneath a facade of informality in the operation of a business. Here the evidence supports the conclusion that the ordinary practice of the business in relation to the screening of applications was followed, and in light of the evidence I therefore conclude that Mr. Maninos must have seen Mr. Blanchette's resume, and that it was rejected because of the policy of not hiring men.

Remedy

Pursuant to s. 40(1) of the Ontario Human Rights Code, a board of inquiry is authorized to make various remedial orders, and counsel for the Commission has argued that I should make an order with several components, including

compensation for lost wages during the period which the complainant was unemployed, or in the alternative compensation for the loss of opportunity to compete for the position, compensation for general damages for pain and suffering and also for the loss of the complainant's human right of equality in employment, and interest on these awards. As well, counsel for the Commission urged me to order the respondent to provide a letter of assurance of future compliance with the Code, and to order that the Commission monitor future hiring competitions until 25 positions are filled or until two years pass, and furthermore that Human Rights Commission staff be allowed to deliver a staff seminar about the Code during normal working hours to employees of the respondent. Finally, counsel for the Commission urged me to make the customary order that the Code be posted on the premises.

(i) Lost Wages/Loss of Opportunity

Paragraph 40(1)(b) of the Ontario Human Rights Code authorizes a board of inquiry to "direct the party [who has contravened the Code] to make restitution, including monetary compensation, for loss arising out of the infringement ..." Traditionally in employment discrimination cases, part of this monetary compensation is for lost wages. In a case of a refusal to hire an applicant for employment, there can be no automatic entitlement to compensation for lost wages; such damages must be based on an assumption either that the complainant would have been hired for the position but for the discrimination, or at least that there was a reasonable possibility that the complainant would have been hired. I agree with the discussion of this issue in

Dantu v. North Vancouver District Fire Department (1986), 8 C.H.R.R. D/3649, a case cited to me by counsel for the Commission which involves a scenario reasonably similar to the facts of this case. In Dantu the board stated that an award of monetary compensation in a case involving a discriminatory refusal to consider an application was an award to compensate for the loss of opportunity to compete for a job. It thus subsumes the alternative submission of counsel for the Commission on this point, and I will consider it in that way.

In assessing the appropriate compensation for this loss one of the factors which is relevant is the likelihood that the complainant would have been hired for the position in question. I concur with the analysis of the board in the Dantu case on this point, and particularly with the description of the appropriate standard to be applied in these circumstances, at page D/3651:

> That approach is to require that a party seeking damages for a lost opportunity show that something of real value was lost, but at the same time to recognize that the burden can be met by showing that there was a reasonable possibility that that opportunity would have produced the financial reward associated with it.

Applying this approach to the facts of this case, it is important to recall that compensation on this head is for the value of the opportunity to be considered for employment free from discrimination which Mr. Blanchette was denied here. Basically I must assess the likelihood that he would have been hired, assuming that it has been established that there was at least a "reasonable possibility" that he would have been hired.

The informal hiring policy of the respondent, and the large number of applications received in response to a newspaper advertisement have already

been described. During the hearing counsel for the respondent stated that "we're not aware of any reason why Mr. Blanchette couldn't do the job that was advertised for ... as far as his physical ability and his mental ability to do that job, the respondent admits that we're not aware of any reason why he couldn't do the job." (Transcript, page 18). In my view this admission, though relevant, is not determinative of the issue at hand, because the admission is limited to Mr. Blanchette's capacity to do the job; it does not go to the likelihood that he would have been selected for the position from this applicant pool.

On this point the testimony of Mr. Maninos about the criteria he employed in selecting employees must be considered. In a letter in response to a request for further information from the Human Rights Officer responsible for investigating this case (Exhibit 14), Mr. Maninos stated:

> Experience is really not important in deciding on hiring someone. Sometimes no experience is probably better because you can train a person in the way that you want them to work and act towards customers without worrying if they have bad habits from previous employment. Also taken into account is the appearance and personality of the applicant, which is important when working with the public.

A similar description of the selection criteria is contained in the Respondent's Questionnaire (Exhibit 15).

During cross-examination on this point, Mr. Maninos stated (Transcript, pp. 133-34):

> A. Yes, you know personality is number one factor. Appearance is another major factor. Experience there is a good way of a girl getting a job by showing her previous employments and a good

> record, but that doesn't mean that a girl who doesn't have any experience would be affected because of inexperience. We never use that, we never use that against somebody because she have no experience. We did have in the past many, many girls without experience, yes.

Earlier in the hearing, during examination-in-chief, Mr. Maninos stated that "... what I'm looking [for] sometimes, experience, or sometimes to fulfill different shifts, or sometimes you have let's say people that they only can work certain shifts." (Transcript, p. 119).

In summary, this evidence indicates that Mr. Maninos did not apply a fixed set of criteria in selecting among applicants. In his testimony he identified several relevant criteria, including availability to work certain shifts, experience, personality and appearance. As may be expected in such a small business, however, no uniform or particular weight appears to have been attached to these factors. I might add that I am at a loss to understand how appearance was relevant in the initial screening stage, because the respondent did not require that a photograph of the applicant be submitted. This could only have been relevant after the applicants had been interviewed. In any event, I am satisfied that the criteria listed above were applied by Mr. Maninos in making the initial screening of applicants and in choosing among those who were selected for interviews.

In light of this evidence I conclude that I am satisfied that the Commission has demonstrated that there was a "reasonable possibility" that Mr. Blanchette would have been chosen for an interview but for the discriminatory employment policy applied by the respondent, and furthermore I conclude that there was

"reasonable possibility" that he would have been hired. Mr. Blanchette had relevant retail and food preparation experience, which was indicated on the resume he submitted. He had, in fact, more experience than Ms. Roach, who was hired in October 1985 (see Transcript, p. 39). Given the evidence of Mr. Maninos, however, there is imply no way to know whether Mr. Blanchette would actually have been hired after he was interviewed.

This does not mean, however, that Mr. Blanchette cannot recover for the loss of an opportunity to be interviewed. Instead, it appears to me that the loss of this opportunity should be compensated because the interview, though not certain to lead to employment, was an opportunity which, from Mr. Blanchette's point of view, was of considerable value. Indeed, Mr. Blanchette testified that he was confident that he would have been selected had he been interviewed (Transcript, p. 29), and in view of the respondent's admission that he possessed the basic qualifications for the position, I conclude that this confidence was not entirely misplaced.

I am of the view that Mr. Blanchette should be compensated for the loss of opportunity to be interviewed for this position, but in my opinion the quantum of this award must reflect the degree of likelihood that he would have been hired following an interview; that is, the quantum of recovery should reflect the uncertainty of the outcome of the hiring process. Although the amount of compensation for this lost opportunity is inherently difficult to ascertain, in my opinion it is relevant that what was sought by Mr. Blanchette was a part-time, minimum wage job. Compensation for the loss of opportunity should be measured, in part, by the nature of the financial gain which would have

accompanied a successful outcome of the hiring process. I would fix compensation under this head of recovery at $500.00.

(ii) Damages for Pain and Suffering

Counsel for the Commission submitted that I should award Mr. Blanchette $1,000 as general damages for the humiliation he suffered as a result of this discriminatory denial of employment. In testimony Mr. Blanchette stated that he was discouraged and upset by this occurrence, and he stated that it affected his performance at College, and that, in fact, he failed some courses during the fall semester in 1985. On this point I accept the submission of counsel for the respondent that a sufficient connection between the denial of an interview in this case and the failure to pass his courses has not been demonstrated by the Commission. No evidence regarding the prior academic record of Mr. Blanchette, his actual results in the fall semester of 1985, or the extent of emotional distress he suffered was introduced, and I am not prepared to conclude on the basis of the evidence before me that this act of discrimination so traumatized the complainant that he failed courses during the 1985-86 academic year.

However, I do accept that Mr. Blanchette should receive some compensation for the wilful discrimination by the respondent, and that this award should include compensation for the infringement of Mr. Blanchette's human right of equality in employment. On this point I adopt the reasoning of the board of inquiry in Cameron v. Nel-Gor Nursing Home (1984), 5 C.H.R.R. D/2170, and the Divisional Court in Foster Wheeler Ltd. v. Ont. Human Rights

Comm'n and Scott (1987), 8 C.H.R.R. D/4179 (re compensation for "hurt feelings"). I would fix compensation under this head of recovery at $500.00.

(iii) Ancillary Orders - Compliance, Monitoring

Counsel for the Commission urged me to order the respondent to provide a letter of assurance of future compliance with the Ontario Human Rights Code to the Ontario Human Rights Commission and to Mr. Blanchette, and pursuant to s. 40(1) of the Code I so order. I also order that a copy of the Code be posted in a prominent place in both locations of the respondent business.

Counsel for the Commission submitted that I should order the respondent to allow the Commission to monitor future hiring decisions for a period of two years, or until 25 positions are filled, but in my view this is not an appropriate remedy in this case.

Finally, counsel for the Commission submitted that I should order that Commission staff be permitted to give the respondent's employees an education session about the objectives, scope and content of the Code. I do not think that this is an appropriate remedy in this case, because the discrimination I have found here originated with, and was perpetuated by Mr. Maninos, not the employees. Since I have already ordered Mr. Maninos (on behalf of the respondent) to provide a letter of assurance of future compliance with the Code, no further "educational" order is required.

Order

Pursuant to s. 40(1) of the Ontario Human Rights Code, I find that the right of the complainant to "equal treatment with respect to employment without discrimination because of ... sex ..." pursuant to s. 4(1) has been infringed contrary to s. 8, and I make the following order.

1. The respondent shall pay to the complainant

   (i) damages for loss of opportunity to be considered for employment, in the amount of $500.00

   (ii) damages for humiliation, and for the infringement of his human right of equality in employment, in the amount of $500.00

   (iii) interest on the above sums, from December 1985 to December 1987 [$1,000 x 24 months at 9.75%], in the amount of $195.00

   TOTAL $1,195.00

2. The respondent shall provide a letter of assurance of future compliance with the provisions of the Ontario Human Rights Code to Mr. Blanchette, and to the Ontario Human Rights Commission.

3. The respondent shall post a copy of the Ontario Human Rights Code in a prominent place in its Queen Street and Station Mall outlets.

With the consent of both counsel I adjourned these proceedings at the conclusion of the hearing, pending my decision. Since the hearing was adjourned the time limitation set out in s. 40(7) does not apply. Nevertheless I am keenly aware of

the need to prepare this decision with all deliberate speed, and I regret that the complexity of the legal and factual issues presented slowed my progress.

Counsel had indicated a desire to make submissions as to costs, depending on the outcome of my decision. If counsel still wish to make these submissions they may do so in writing to me within 30 days, and in any event I shall remain seized of this matter until the orders I made are carried out.

Dated the 16th day of December, 1987.

William F. Pentney